

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 728/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Naseem Begum, Arabic Teacher (BPS-15), GGMS Kachi Kopaer, Tehsil Dargai, District Malakand. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (F), District Malakand.
4. Mst: Robina Begum, SAT (BPS-16) GGHS Mehardi, Tehsil Dargai, District Malakand.
5. Mst: Nishat Begum, SAT (BPS-16) GGHS Total, District Malakand.
6. Mst: Nazia Begum, SAT (BPS-16), GGHS Dargai, Tehsil Dargai, District Malakand.
7. Mst: Rehana, SAT (BPS-16), GGHS Julagram, Tehsil Batkhela, District Malakand.

... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....12.06.2019

Date of Hearing.....04.03.2024

Date of Decision.....04.03.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer as copied below:

“On acceptance of this appeal, the impugned Notification dated 18.2.2019 may very kindly be set aside to the extent of private respondents and the respondents may kindly be directed to consider the appellant for promotion to the post of



Senior Arabic Teacher (BPS-16) w.e.f. 18.02.2019 with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was serving the respondent department as Arabic Teacher (BPS-15) since 30.08.1995 and was performing her duties upto the entire satisfaction of her superiors. During service, appellant was directed to furnish complete documents alongwith PERs for promotion to the next higher scale of BPS-16. She submitted all the requisite documents before the respondent No.3. Thereafter, notification dated 18.02.2019 was issued wherein juniors to her were promoted and she was ignored. Feeling aggrieved, she filed departmental appeal before the appellate authority, which was not responded, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 2, 4 and 25 of the Constitution of Islamic Republic of Pakistan. He further argued that the notification dated 18.02.2019 is against law, facts, norms of justice and material on record, therefore, not tenable and liable to be set-aside. He further argued that the respondents discriminated the appellant on the subject by not promoting her to the post of SAT BPS-16 inspite of seniority and eligibility. He further argued that the impugned notification is violative of Section 9 of the



Civil Servant Act, 1973 read with Rule-7 of the (Appointment, Promotion & Transfer) Rules, 1989, hence, not tenable and liable to be set aside.

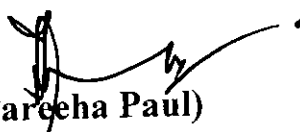
5. Conversely learned Deputy District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that respondent department directed all the teachers to furnish their complete documents for the promotion to next higher scale but the appellant had not submitted her required documents within time, so the Departmental Promotion Committee was unable to decide her promotion case. He further contended that DPC made the promotions purely on merit in light of the promotion policy of the government.

6. Perusal of record reveals that appellant was appointed as Arabic Teacher (BPS-15) vide order dated 30.08.1995. She was asked by the respondent/department to furnish complete documents along with PERs for considering her promotion to the post of Senior Arabic Teacher (BPS-16), which she accordingly submitted to respondent No.3. Appellant was surprised when junior to her, respondent No. 4, 6 and 7, were promoted to the post of SAT (BPS-16) by ignoring her, vide order dated 18.02.2019, upon which she filed departmental appeal but in vain. Perusal of undisputed seniority list of Arabic Teacher (Female) of Malakand Agency issued by EDO reveals that appellant was at serial No 11 of the same while private respondents No 4 to 7 were at serial No. 17, 22, 23 and 26 respectively because they were appointed latter than appellant i.e 18th February 1997, 7th January 1998, 8th January 1998 and 28 February 1998 respectively while appellant was appointed on 31st August 1995. Admittedly name of the appellant was sent and was considered by DPC which is evident from working, paper. Against the name of the appellant in the working paper, it is mentioned in Remarks column "No

eligible can't be available". Representative of respondents was asked to provide minutes of the meeting of DPC on the basis of which impugned order was issued but he failed to produce the same. Respondents, in reply, had taken the instance that appellant failed to submit her ACR within given time limit, therefore, she was not considered. This is a lame excuse because no such thing was mentioned in the working paper, wherein it is mentioned at Serial No. 1 that "their ACRs, synopsis are free from adverse remarks", which means that ACRs were submitted by the appellant based on which said opinion/result of having no adverse remarks in the ACRs were given in working paper. In our humble view, when there were no adverse remarks in ACRs of the appellant, coupled with the fact of possessing required length of service, and qualification, beside being senior to private respondent No 4 to 7, then there was no hurdle in the way of her promotion to the next higher grade (BPS-16) but she was wrongly not promoted by the DPC for the reason best known to them.

7. It is pertinent to mention here that appellant died during pendency of instant appeal on 31.05.2021 and list of her legal heirs is available on file. Therefore, respondents are directed to grant proforma promotion to the appellant from the date when she was considered by the DPC and was ignored without any plausible reason i.e 18.02.2019. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of March, 2024.*

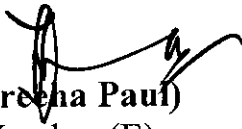

(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)


ORDER

04.03.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is accepted as prayed for. Costs shall follow the event. Cost shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of March, 2024.*



(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

*Kaleemullah